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Mandatory Bequest (Wasiat Wajibah) in Interfaith Inheritance Cases (A Study of Indonesian Supreme Court Decision No. 16 K/AG/2010 from the Perspective of Maqāṣid al-Sharī'ah)

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Abstract

A person's death often gives rise to inheritance disputes, especially when there is a difference of religion between the deceased (the decedent) and the heirs. In Islamic law, the majority of jurists hold that a difference of religion constitutes an impediment to mutual inheritance. Nevertheless, some scholars propose an alternative solution through the mechanism of wasiat wajibah (mandatory bequest) for parties who are legally barred from inheriting. Building on this reality, this study aims to analyze the legal reasoning in the decisions at the first instance, appellate, and cassation levels by using the perspective of Maqāṣid al-Sharī'ah, in order to assess the extent to which those decisions reflect principles of justice and public benefit (maṣlaḥah). This research is a library-based study with a descriptive-analytical character. The approaches employed include normative juridical and statutory juridical approaches, while remaining grounded in the overarching objectives of Islamic law (Maqāṣid al-Sharī'ah). The findings indicate that Indonesian Supreme Court Decision No. 16 K/AG/2010 expands the application of wasiat wajibah which, under the Compilation of Islamic Law (KHI), is originally intended only for adopted children and adoptive parents—into a solution for contemporary inheritance problems, including for non-Muslim heirs. Through this decision, the Supreme Court determined that parties who are barred from inheriting due to religious difference may still receive a portion of the estate through a mandatory bequest, based on considerations of justice, humanity, and social welfare. This decision is considered consistent with the objectives of Islamic law, particularly the protection of religion, life, and property, because it preserves the core principles of Islamic inheritance law while also providing protection and welfare for those otherwise excluded. The implementation of wasiat wajibah is relevant to Indonesia's plural society and reflects the orientation of Islamic law toward the public good (maṣlaḥah) of the community. This article recommends: clarifying the regulation of wasiat wajibah in the Compilation of Islamic Law (KHI) including for heirs of different religions; issuing Supreme Court (MA) technical guidelines to ensure consistent and predictable rulings; and strengthening legal literacy/mediation as well as inheritance planning (wills and hibah) to prevent disputes in line with maqāṣid al-sharī'ah.

Keywords: Mandatory Bequest, Inheritance, Non-Muslim, Maqāṣid al-Sharī'ah.

Introduction

Islamic inheritance law is one of the most important expressions of Islamic family law. It is regarded as half of the knowledge possessed by humankind, as emphasized by the Prophet Muhammad (peace be upon him) in a hadith narrated by Ibn Mājah:

قال رسول الله صلى الله عليه وسلم: يا أبا هريرة، تعلّموا الفرائض وعلّموها الناس، فإنها نصف العلم، وهو يُنسى، وهو أول شيء يُنزع من أمتي.

> "The Messenger of Allah (peace be upon him) said, 'O Abu Hurairah: Learn the knowledge of farā'iḍ (the Islamic laws of inheritance) and teach it to others, for indeed the knowledge of farā'iḍ is half of all knowledge, and it is the first knowledge that will be taken away from my community"[1]

Based on this, studying and examining Islamic inheritance law means engaging with half of the knowledge possessed by humankind—knowledge that has lived and continues to live within Muslim societies from the earliest period of Islam through the medieval era, the modern and contemporary periods, and into the future.[2]

Human beings, as individuals, possess an inner life that is personal in nature. However, as social beings, they cannot be separated from communal life. People are born, live, grow, and die within the framework of society.[3] In a broader social context, society is composed of various groups of individuals, ethnicities, and religions that also influence patterns of family formation. Within a shared social order that interacts and integrates in society, the occurrence of inter-ethnic and interfaith marriages is not unlikely. Indeed, it is not uncommon to find, within a single family, biological siblings who adhere to different religions, or parent–child relationships marked by differences in belief.[3]

One legal implication of religious difference within a family concerns inheritance. This is due to one of the fundamental principles in Islamic inheritance law, namely the principle of Islamic personality (asas personalitas keislaman). This principle affirms that the transfer of inherited property can only occur between a decedent and heirs who are both Muslim. Where there is

[1] Abu Abdullah Muhammad bin Yazid al – Qazwaini, *Sunan Ibn Majah,* jilid II, (Beiru: Dar al-Fikr, tt.), Hadis no. 2710, p. 197.

[2] J. N. D. Anderson, *Hukum Islam Di Dunia Modern*, terj.Machnun Husein Surabaya: Amarpress, 1991), p. 66

[3] C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, cet. ke-8 (Jakarta: Balai Pustaka, 1989), p. 29.

a difference of belief (religion) between the decedent and the heirs, there is no mutual right of inheritance.[4]

The provision regarding the impediment to inheritance due to differences of religion is affirmed in a hadith of the Prophet Muhammad (peace be upon him) narrated by Usāmah ibn Zayd r.a.

عَنْ أُسَامَةَ بْنِ زَيْدٍ رَضِيَ اللَّهُ عَنْهُ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا يَرِثُ الْكَافِرُ الْمُسْلِمَ: (رواه البخاري ومسلم)

> "From Usāmah ibn Zayd (may Allah be pleased with him), the Messenger of Allah (peace be upon him) said: A Muslim does not inherit from a disbeliever, and a disbeliever does not inherit from a Muslim."[5]

In addition to being grounded in the general meaning of the hadith, the prohibition on mutual inheritance between Muslims and non-Muslims is also supported by the Prophet Muhammad's (peace be upon him) own practice when distributing the estate of Abū Ṭālib, who died in a state of disbelief. The Prophet (peace be upon him) allocated the inheritance only to 'Uqayl and Ṭālib, while Abū Ṭālib's other two sons, Ja'far and 'Alī, received no share because they were Muslims.[6]

This prohibition on mutual inheritance between Muslims and non-Muslims has been agreed upon by the jurists (jumhūr al-'ulamā'), who hold that religious difference between the decedent and the heirs constitutes one of the impediments to inheritance. The jumhūr, as cited by Ibn Qudāmah, maintain that the hadith narrated by Usāmah ibn Zayd provides a clear legal directive and therefore requires no alternative interpretation. Moreover, the Prophet Muhammad (peace be upon him) himself implemented this rule when distributing Abū Ṭālib's estate, in which only heirs who remained non-Muslim received shares. In addition, inheritance in essence functions as a legal bond linking the decedent and the heirs. Where a difference of religion exists between them, that inheritance bond is regarded as severed and no longer gives rise to reciprocal rights of inheritance.

Accordingly, religious affiliation becomes a fundamental factor determining whether an inheritance relationship exists between the decedent and the heirs. A normative understanding of these religious texts cannot be separated from the historical and sociological contexts that underlie them—namely, the strained relations between Muslims and non-Muslims in the early

[4] Komite Fakultas Syari'ah Universitas al-Azhar Mesir, Hukum Waris, alih bahasa, Addys Aldizar dan Fathurrahman, cet. 1 (Jakarta: Senayan Abadi Publishing, 2004), p. 47

[5] Al-Imam Abu Abdillah Muhammad ibn Ismail ibn al-Mugīrah ibn Bardizbah al-Bukhārī, *Ṣaḥīḥ al-Bukhārī,* Juz 4, (Beirūt Libanon: Dār al-Fikr, 1410 H/1990 M), p. 194.

[6] Fatchur Rahman, *Ilmu Waris,* cet. II (Bandung: al-Ma'arif, 1981), p. 99

period of Islam, which culminated in the rule prohibiting inheritance between parties of different religions.[7]

Based on the foregoing arguments of the jumhūr of jurists, it is agreed that the application of the impediment to mutual inheritance between heirs of different religions constitutes one of the legal instruments of Islamic law aimed at safeguarding and preserving religion (ḥifẓ al-dīn). Within the framework of Maqāṣid al-Sharī'ah, the protection of religion occupies the highest position among the objectives underpinning the enactment of Islamic law.[8]

In the context of interfaith marriage, if a husband or wife dies, the law used to govern the inheritance is the law applicable to the deceased person (the decedent). This principle is affirmed in the Jurisprudence of the Supreme Court of the Republic of Indonesia (MARI) No. 172/K/Sip/1974, which states that "in an inheritance dispute, the inheritance law applied is the law of the decedent.

Furthermore, in Book II of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) on Inheritance Law, particularly in the General Provisions of Article 171, it is explained that:

1. Decedent (Pewaris) is a person who, at the time of death or who is declared deceased based on a court decision is Muslim, and leaves heirs and an estate.
2. Heir (Ahli waris) is a person who, at the time the decedent dies, has a blood relationship or a marital relationship with the decedent, is Muslim, and is not legally barred from inheriting.[9]

Based on the general provisions of the Compilation of Islamic Law (KHI), Article 171 letters (b) and (c), it can be understood that, between the decedent and the heirs, in addition to having a marital bond or blood relationship, there must also be a shared religious faith. Accordingly, these provisions normatively nullify the right of mutual inheritance between parties who adhere to different religions.

Furthermore, the principle of Islamic personality (asas personalitas keislaman) of heirs in the KHI is affirmed in Article 172, which states that an heir is deemed Muslim if this can be proven through an identity card, confession, religious practice, or testimony. As for a newborn baby or a child who has not yet reached adulthood, religious status is determined based on the father's religion or the environment in which the child is raised.[10]

In practice, these provisions often give rise to inheritance disputes among family members, particularly when, within a single family, one or more

[7] Ibnu Qudāmah, *al-Mughnī* (Kairo: Matba'ah al-Iman, t.th.), IX: p, 155

[8] Budi Nugraheni, Destri, Haniah Ilhami, *Pembaruan Hukum Kewarisan Islam di Indonesia,* (Yogyakarta: Gajah Mada University Press, 2014), p. 74

[9] Kompilasi Hukum Islam, buku II, ketentuan umum pasal 171, huruf (b) dan (c).

[10] Kompilasi Hukum Islam, buku II, ketentuan umum pasal 172

members adhere to a different religion.[11] Although the KHI expressly requires that an heir must be Muslim, Indonesia's plural social reality creates room for normative conflict between the provisions of Islamic law and the lived social conditions of society. Nevertheless, within Indonesian legal jurisprudence, there are judicial decisions—at the levels of the Religious Court (Pengadilan Agama/PA), the Religious High Court (Pengadilan Tinggi Agama/PTA), and the Supreme Court (Mahkamah Agung/MA)—that grant a portion of the decedent's estate to heirs of a different religion through the mechanism of wasiat wajibah (mandatory bequest).[12]

A mandatory bequest (wasiat wajibah) is a legal act undertaken by the ruler or a judge, as an apparatus of the state, to compel or determine the existence of a bequest obligation on behalf of a person who has died, to be granted to a particular party under certain circumstances.[13] Thus, in legal terms, a wasiat wajibah (mandatory bequest) is regarded as a bequest that is deemed to exist, even though the decedent did not actually make such a bequest during his or her lifetime.[14] This legal presumption arises from the principle that once a legal provision establishes an obligation to make a bequest, the presence or absence of an explicit testamentary declaration does not prevent its applicability, because the bequest is deemed to exist by operation of law.[15]

In the Encyclopedia of Islamic Law (Ensiklopedi Hukum Islam), wasiat wajibah is described as a policy of the ruler that is coercive in nature, intended to mandate the granting of a bequest to a specific person under certain conditions. Wasiat wajibah is a form of bequest designated for an heir or a particular party who is, as a matter of law, barred from receiving an inheritance directly. It applies to relatives who do not obtain a share of the deceased's estate due to the existence of a shar'ī impediment.[16]

Bequests (wasiat) fall within the absolute jurisdiction of the Religious Courts (Pengadilan Agama). This absolute jurisdiction is regulated in Article 2 and Article 49 of Law No. 7 of 1989 on Religious Courts, as amended by Law No.

[11] Zakiah Darajat, *Ilmu Fiqh,* Jilid, III (Yogyakarta: PT Dana Bhakti Wakaf, 1995), p. 27.

[12] Putusan Mahkamah Agung Nomor Register: 51 K/AG/1999 tanggal 29 September 1999 dan putusan Nomor 16 K AG 2010.

[13] Ahmad Rofiq, *Hukum Islam di Indonesia,* (Jakarta: PT raja Grafindo Persada, 1997), p. 462.

[14] Yahya Harahap, *Informasi Materi Kompilasi Hukum Islam: Mempositifkan Abstraksi Hukum Islam, Di Dalam: Kompilasi Hukum Islam Dan Peradilan Agama Dalam Sistem Hukum Nasional,* penyunting Cik Hasan Bisri (Jakarta:Logos Wacana Ilmu, 1999), p. 2-3.

[15] *Ibid,* p. 2-3.

[16] Abdul Aziz Dahlan, *Ensiklopedi Hukun Islam,* (Jakarta: PT Ikhtiar Baru Van Hoeve, 2000), Jilid 6, p.1930.

3 of 2006 amending Law No. 7 of 1989 on Religious Courts, and further amended for a second time by Law No. 50 of 2009.[17]

Article 2 of Law No. 3 of 2006 affirms that the Religious Courts (Peradilan Agama) constitute one of the bodies exercising judicial power for justice seekers who are Muslim, in relation to certain matters as stipulated in the said law. Furthermore, Article 49 of Law No. 3 of 2006 states that the Religious Court has the duty and authority to examine, adjudicate, and resolve at the first-instance level disputes between Muslims in the fields of marriage, inheritance, bequests (wasiat), gifts (hibah), endowments (wakaf), almsgiving (zakat), donations (infak), charity (sedekah), and Islamic economics.

As for the Compilation of Islamic Law (KHI), the provisions on *wasiat wajibah* are explicitly regulated in Article 209, which provides that:

1. In respect of adoptive parents who do not receive a bequest, a *wasiat wajibah* of up to one-third (1/3) of the adopted child's estate shall be granted to them.
2. In respect of adopted children who do not receive a bequest, a *wasiat wajibah* of up to one-third (1/3) of the adoptive parents' estate shall be granted to them.[18]

These provisions indicate that, normatively, the regulation of wasiat wajibah in the Compilation of Islamic Law (KHI) is intended only for the relationship between adoptive parents and adopted children—whether the adopted child dies first or the adoptive parents die first. Nevertheless, in judicial practice there have been decisions in which judges grant entitlement to inherited property or an estate to non-Muslim heirs by grounding their reasoning in Article 209 of the KHI. This is reflected in Supreme Court Decision No. 16K/AG/2010, which granted a non-Muslim wife a right to a portion of her Muslim husband's estate through the mechanism of wasiat wajibah.

To clarify the application of this norm, Supreme Court jurisprudence of the Republic of Indonesia, Register No. 16K/AG/2010 concerning interfaith inheritance, explains that an inheritance dispute arose within a Muslim family involving a non-Muslim wife. The case describes that on 1 November 1990, Evie Lany Mosinta (the defendant) married Muhammad Armaya bin Renreng, also known as Armaya Renreng (the decedent), at the Civil Registry Office of Bo'E, Poso Regency. The marriage was conducted at the Civil Registry Office with reference to the parties' identities, namely that the decedent was Muslim and the defendant was non-Muslim. The marriage lasted for 18 years, and the couple had no children.

[17] M. Yahya Harahap, *Kedudukan Kewenangan dan Acara Peradilan Agama*, (Jakarta: Sinar Grafika, 2001), p. 148

[18] Kompilasi Hukum Islam, pasal 209 ayat 1 dan 2.

When Muhammad Armaya bin Renneng, also known as Armaya Renneng, passed away, he left the following heirs:

1. Halimah Daeng Baji (biological mother);
2. Dra. Hj. Murnihati binti Renneng, M.Kes. (sister);
3. Dra. Hj. Mulyahati binti Renneng, M.Si. (sister);
4. Djelitahati binti Renneng, SST. (sister);
5. Ir. Muhammad Arsal bin Renneng (brother).

Because the defendant (the decedent's wife) was non-Muslim, the plaintiffs argued—based on the provisions of Islamic inheritance law—that the defendant was not an heir. However, according to the legal system adhered to by the defendant, she was regarded as the sole heir entitled to the entirety of the decedent's estate. Various efforts were made by the plaintiffs to persuade the defendant to distribute the estate amicably, but the defendant continued to refuse to hand over the property. Therefore, the plaintiffs filed a claim with the Makassar Religious Court so that the defendant would provide the plaintiffs with their respective rights to the decedent's estate.

At this stage, the Makassar Religious Court granted the plaintiffs' claim by issuing Decision No. 732/Pdt.G/2008/PA.Mks dated 2 March 2009. The court divided the entire property into two parts as marital property. It then awarded the whole of the decedent's estate (one-half of the marital property) to the plaintiffs, and the other half of the marital property to the defendant. On appeal, the Religious High Court upheld the decision of the Religious Court by issuing Decision No. 59/Pdt.G/PTA.Mks dated 15 June 2009. Because the defendant considered the decision unfair, she filed a cassation appeal to the Supreme Court.

At the Supreme Court level, in relation to the case described above, the panel of judges issued Decision No. 16 K/AG/2010 and set aside the Religious High Court Decision No. 59/Pdt.G/PTA.Mks dated 15 June 2009—which had affirmed the Makassar Religious Court Decision No. 732/Pdt.G/2008/PA.Mks dated 2 March 2009. The Supreme Court held that the defendant was entitled to one-half of the marital property shared with the decedent, while the remainder was to be given to the decedent's heirs, namely the plaintiffs. However, from the one-half portion of the estate allocated to the heirs, the Court also granted one-quarter (1/4) to the defendant in the form of a *wasiat wajibah* (mandatory bequest). In this Supreme Court decision, the distribution was carried out after the entire property had first been divided into two halves as marital property; thereafter, the Court awarded an inheritance share through *wasiat wajibah* to the defendant/cassation applicant as a non-Muslim heir (the decedent's wife), taken from the half portion allocated to the heirs, amounting to one-quarter (1/4).

Studies on wasiat wajibah (mandatory bequest) in Indonesian Islamic family law generally develop along two main lines. First, they examine the

expansion of wasiat wajibah as a corrective instrument when the rigid application of formal inheritance norms—including impediments related to religious status or marital status—risks producing injustice. Second, they employ Maqāṣid al-Sharī'ah as an ethical–juridical framework to assess the legitimacy of such expansion within a plural society. Within this context, the article "Mandatory Bequest in Interfaith Inheritance Cases (A Study of Indonesian Supreme Court Decision No. 16 K/AG/2010 from the Perspective of Maqāṣid al-Sharī'ah)" positions wasiat wajibah as a "bridge" between adherence to the farā'iḍ (fixed Islamic inheritance shares) and the pursuit of social justice in interfaith family relations.

Compared with Hidayat[19] on wasiat wajibah for an istri sirri (a wife in an unregistered marriage) from Jasser Auda's Maqāṣid perspective, the Supreme Court Decision No. 16 K/AG/2010 addresses a different type of legal impediment. Hidayat highlights the issue of recognition and protection for a vulnerable party due to the non-registration of marriage, so wasiat wajibah is framed as a pathway to secure the wife's economic rights and welfare (maṣlaḥah). By contrast, the interfaith inheritance article examines wasiat wajibah in relation to a more classical impediment in fiqh (difference of religion), but within Indonesia's plural social reality and the need to protect the surviving family members.

Meanwhile, Hajida[20] on disparities in religious court rulings involving non-Muslim heirs adds an important dimension: the problem of judicial consistency within a legal pluralism setting. Hajida uses Maqāṣid al-Sharī'ah not only to evaluate whether a decision is "just," but also to explain why courts may produce divergent rulings in similar cases and how multiple legal sources (the KHI, jurisprudence, and constitutional principles) shape judicial outcomes. In this light, Supreme Court Decision No. 16 K/AG/2010 can be seen as a pivotal reference point with standardizing potential, because it articulates an explicit maqāṣid-based reasoning to provide room for non-Muslim heirs through wasiat wajibah.

Therefore, the novelty of the article on Decision No. 16 K/AG/2010 lies in affirming wasiat wajibah as a responsive instrument for interfaith inheritance disputes: it preserves the core structure of Islamic inheritance law while accommodating justice and public benefit for parties who are barred from inheriting. If Hidayat (2024) emphasizes protecting vulnerable parties due to marital status, and Hajida (2021) emphasizes disparities in rulings under legal

[19] Hidayat, J.H., 2024. Wasiat Wajibah Untuk Istri Sirri Perspektif Maqaṣid Asy-syarī'ah Jasser Auda (Studi Kasus Putusan Pengadilan Agama Denpasar No. 363/Pdt. G/2020/PA. Dps) (Doctoral dissertation, Universitas Islam Indonesia).

[20] Hajida, I.Z.N.S., 2021. Disparitas Putusan Pengadilan Agama dalam Sengketa Ahli Waris Non Muslim Perspektif Maqâṣid al-Syarî'ah dan Legal Pluralism (Master's thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta).

pluralism, then this article occupies the space between them—strengthening the maqāṣid-based justification for expanding wasiat wajibah while providing an argumentative basis for more uniform judicial practice in interfaith inheritance disputes.

From the background described above, the author is interested in examining the following issues: (1) How are wasiat wajibah (mandatory bequests) regulated and implemented within the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI)? (2) What are the legal bases and judicial considerations underlying the Supreme Court's Decision No. 16 K/AG/2010 concerning interfaith inheritance, which grants a party who is legally barred from inheriting a share of the decedent's estate through wasiat wajibah? (3) How does Maqāṣid al-Sharī'ah assess Supreme Court Decision No. 16 K/AG/2010 on interfaith inheritance?

Method

The preparation of this article is based on a literature study, or library research. A literature review in a study refers to research in which the data sources are derived from library materials and scholarly literature.[21] The initial effort to collect data for the preparation of this article was carried out by conducting a study of books related to interfaith inheritance law, drawing on sources from classical Islamic jurisprudence (fiqh), civil law, and the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI). This research is descriptive-analytical in nature, namely a study that aims to focus on resolving problems that exist in the present and on issues that are current and topical.[22] The descriptive aspect of this study seeks to provide a clear account of the decision and the legal considerations employed by the Supreme Court (MA) in granting inheritance-related entitlements through wasiat wajibah (mandatory bequest) to non-Muslim relatives. The analytical aspect, meanwhile, serves as a means to examine the decision on the determination of wasiat wajibah in interfaith inheritance cases and to draw conclusions from that analysis. The approach adopted in discussing this article is a juridical and normative approach. According to Soerjono Soekanto, a normative juridical approach is legal research conducted by examining library materials or secondary data as the primary basis of inquiry, through tracing relevant regulations and scholarly

[21] Soejono Soekanto, *Pengantar Penelitian Hukum,* cet. III, (Yogyakarta: UII Press, 1986), p. 13.

[22] Winarno Surakhmad, *Pengantar Penelitian Ilmiah: Dasar, Metode dan Teknik,* ed. Ke-7 (Bandung: Tarsito, 1994), p. 139.

literature related to the issue under study.[23] In the juridical approach, the author will explore how wasiat wajibah (mandatory bequest) is regulated and implemented through the entire set of statutory regulations in Indonesia, so that the basic concept underlying the existence of this legal mechanism can be identified. In the normative approach, the author will examine the issue through the lens of Maqāṣid al-Sharī'ah in relation to the Supreme Court of the Republic of Indonesia Decision No. 16K/AG/2010. Fundamentally, this article seeks to assess the policy reflected in the Supreme Court's decision concerning interfaith inheritance. Therefore, the primary data source used is Supreme Court Decision No. 16 K/AG/2010 on interfaith inheritance. In addition, the author also uses secondary sources from other literature, such as books, journal articles, and other scholarly works that discuss the determination of wasiat wajibah for heirs of different religions. The data obtained in this study will be analyzed qualitatively using both juridical and normative approaches. The author will first describe the data relevant to the issues discussed, and then analyze it using the designated approaches. As for the reasoning method employed in analyzing the problem, the author uses the following method: a) Deductive Method: Deduction is a way of analyzing a problem by presenting general statements and then drawing a specific conclusion.[24] This method is intended for the discussion of the Maqāṣid al-Sharī'ah review of the determination of wasiat wajibah in Supreme Court Decision No. 16 K/AG/2010. b) Inductive Method: This research employs inductive reasoning, starting from specific norms which are then generalized in order to derive broader legal principles or doctrines. This method is used to identify legal principles embodied in statutory regulations. [25]

Paradigm of Inheritance Law

Islamic inheritance law is the body of inheritance rules that serves as guidance for Muslims in resolving the distribution of the estate left by a deceased family member.[26] Islamic inheritance law is derived from the entire corpus of legal verses in the Qur'an and further explanations provided by the Prophet Muhammad (peace be upon him) in the Sunnah. Inheritance law, while rooted in revelation and containing various principles, in certain respects also reflects principles of inheritance law derived from human reason.

[23] Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat),* (Rajawali Pers, Jakarta, 2001), p. 13-14

[24] Jujun S. Suriasumantri, *Filsafat Ilmu Sebuah Pengantar Populer*, cet. 4 (Jakarta: SinarHarapan, 1987), p. 48-49

[25] Amir Mu'allim dan Yusdani, *Konfigurasi Pemikiran Hukum Islam*, (Yogyakarta: UIIPress Indonesia, 1999), p. 9.

[26] Destri Budi Nugraheni, Haniah Ilhami, *Pembaruan Hukum Kewarisan Islam di Indonesia,* (Yogyakarta: Gadjah Mada University Press, 2014), p. 1.

In some respects, Islamic inheritance law has distinctive characteristics that differentiate it from other systems of inheritance. Among the features that distinguish Islamic inheritance law is the principle of Islamic personality (*asas personalitas keislaman*). This principle determines that the transfer of inheritance occurs only between a decedent and heirs who are both Muslim. Where a difference of religion exists, there is no mutual right of inheritance.

The jurists (*jumhūr al-fuqahā'*) have agreed that a difference of religion between the decedent and the heirs constitutes one of the impediments to inheriting. Accordingly, a non-Muslim cannot inherit from a Muslim, and a Muslim cannot inherit from a non-Muslim. This rule represents the position of the majority of jurists as an application of the general meaning of a hadith of the Prophet (peace be upon him) narrated by Usāmah ibn Zayd, namely:

> "From Usāmah ibn Zayd, he said: The Messenger of Allah (peace be upon him) said, 'There is no mutual inheritance between a Muslim and a disbeliever; likewise, a disbeliever does not inherit from a Muslim.'[27]

Based on the hadith above, Islamic law treats religious difference as an impediment to inheritance. Although this impediment is not stated explicitly in the Qur'an, it is grounded in the prophetic hadith cited above, whose authenticity is widely accepted; therefore, the majority of scholars agree that such an impediment applies. However, some jurists argue that a Muslim may inherit from a non-Muslim's estate.[28]

These scholars maintain that the hadith can be subject to ta'wīl (interpretive construal), as exemplified by the Ḥanafī school's interpretation of the hadith stating, "A Muslim is not to be executed for killing a disbeliever." In their reading, the term "disbeliever" refers to a kāfir ḥarbī—an enemy combatant who openly wages war against Islam. Accordingly, a Muslim does not inherit from a kāfir ḥarbī who truly fights Muslims because the bond between them is considered severed. From this reasoning, Ḥanafī jurists view the prohibition of granting inheritance rights to a "disbeliever" as limited specifically to the kāfir ḥarbī, and not extended (in the same way) to other categories such as the hypocrite (munāfiq), the apostate (murtadd), or the protected non-Muslim under Islamic governance (dhimmī).[29]

As the apex institution for justice within Indonesia's judiciary, the Supreme Court of the Republic of Indonesia determined a wasiat wajibah

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[27] Abu Abdillah Muhammad ibn Ismāil ibn al-Mugīrah ibn Bardizbah al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Juz 4, (Beirūt: Dār al-Fikr, 1410 H/1990 M), p. 194.

[28] Komite Fakultas Syari'ah Universitas al-Azhâr Mesir, Hukum Waris. p. 49.

[29] Yusuf al-Qardhāwī, Fikih Minoritas, *Fatwa Kontemporer Terhadap Kehidupan Kaum Muslimin Di Tengah Masyarakat Non Muslim,* Cet. 1 (Jakarta: PT. Zikrul Hakim, 2004), p. 179-181

(mandatory bequest) for a non-Muslim heir in Decision No. 16 K/AG/2010, viewing it as part of the renewal of Islamic inheritance law in Indonesia. This position is supported by the legal premise that the Qur'anic verses on bequests are not abrogated—at least insofar as they concern close relatives who are excluded from inheritance rights. According to certain opinions among the fuqahā', making such a bequest remains an obligation; and if it is not carried out, the judge must seek another legal avenue to realize it, while the authority (the ruler) determines which claims should be prioritized.[30]

The judge's decision, grounded in ijtihād, must always take into account the public interest (maṣlaḥah) of the community. This is consistent with a well-known legal maxim (qā'idah fiqhiyyah) which states:

تصرف الإمام على الرعية منوط بالمصلحة[31]

This maxim emphasizes that a leader must be oriented toward the public welfare (maṣlaḥah) of the people, rather than following personal desires or the interests of one's family or group. Any policy that brings benefit and welfare to the people is what should be planned and implemented. Conversely, policies that lead to harm (mafsadah) and cause detriment to the public are what must be avoided.[32]

In relation to the determination of a wasiat wajibah (mandatory bequest) for heirs who are barred from inheriting due to a difference of religion, in practice there is indeed no formal legal rule that expressly regulates such a mechanism, particularly within Indonesia's Islamic inheritance law system. This legal vacuum should not be left unaddressed, and it is precisely here that judges and the Supreme Court are expected to engage in legal discovery (rechtsvinding) and legal creation (rechtsschepping) to fill that gap.[33]

The function of the Supreme Court is not merely to create unity and uniformity in the application of law, but also to create, develop, and adapt the law in accordance with societal needs by employing diverse methods of interpretation. This is in line with the legal maxim:

تغيُّر الأحكام بتغيُّر الأزمنة والأحوال.[34]

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[30] J.N.D. Anderson, *Hukum Islam di Dunia Modern*, p. 84.

[31] Jalāl ad-Din 'Abd ar-Rahman as-Suyuṭī, *Al-Asybāh Wa An-Nazāir Fī Al-Furū',* (Beirūt: Dār al-Fikr, 1415 H/1995 M), p. 83

[32] A. Jazuli, *Kaidah-Kaidah Fikih, Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis*, cet. I (Jakarta: Kencana, 2006), p. 148.

[33] Rechtsvinding means finding the legal rule that is appropriate for a particular event, through a systematic examination of those rules in relation to one another. Specialization in the making of law within a broader context constitutes the work of legal experts. N.E. Algra dan H.R.W.Gokkel, Kamus Istilah Hukum, Fochema Andreae Belanda Indonesia (Fochema Andreae"s- Rechtsgeleerd Handvoordenboek), terj. Saleh Adiwinata, A. Teboeki dan Boerhanuddin St. Batoeah, (Bandung: Bina Cipta, 1983). p. 455

[34] Jalāl ad-Dīn 'Abd ar-Rahmān as-Suyūṭī, *Al-Asybāh Wa An-Nazāir Fi Al-Furū'*, p. 74

This maxim should not be understood to mean that Islamic law has no fixed values that can be understood in a definite manner. Rather, it implies that Islamic law contains broad principles that remain open to interpretation.[35] This positions the Supreme Court as an institution that must preserve the applicable law so that it continues to operate, insofar as it remains consistent with the legal consciousness and social values of the community.[36] In addition, this can also be pursued as part of the development of Article 27(1) of Law No. 14 of 1970 on the Basic Provisions of Judicial Power, as amended by Law No. 48 of 2009 on Judicial Power, Article 5(1), which states: "Judges are obliged to recognize, follow, and understand the legal values and sense of justice that live within society.[37]

In its explanatory notes, it is stated that in a society that still recognizes unwritten law and is undergoing upheaval and transition, judges serve as formulators and explorers of the legal values that live among the people. For that reason, they must engage directly with society in order to recognize, experience, and deeply understand the legal sentiments and sense of justice that exist within the community. In this way, judges are able to deliver decisions that accord with both the law and the public sense of justice.[38]

In line with that, Islamic legal maxims include an expression which states:

حكم الحاكم يرفع الخلاف[39]

The meaning of this maxim is that when a judge is faced with differing opinions among scholars ('ulamā') and then adopts and rules according to one of those opinions, the litigating parties may not reject the judge's decision on the ground that there exists another scholarly opinion that differs from the judge's ijtihād. Such a decision is not to be challenged unconditionally, in the sense that it must not depart from the core principles of the Sharī'ah, such as public welfare (maṣlaḥah) and justice.[40]

Islamic law is a legal system aimed at realizing human welfare in both this world and the Hereafter. Therefore, in determining a wasiat wajibah (mandatory bequest) in Supreme Court Decision No. 16 K/AG/2010, it is appropriate that the Supreme Court also take the objectives and ideals of

[35] Harun M. Husain, *Kasasi Sebagai Upaya Hukum*, (Jakarta: Sinar Grafika, 1992), p. 189

[36] Bustanul Arifin, *Pelembagaan Hukum Islam di Indonesia, Akar Sejarah, Hambatan dan Prospeknya* (Jakarta: Gema Insani Press, 1996), p. 111.

[37] Undang-undang tentang Enam Hukum, UU RI No. 24 th. 2003 Mahkamah Konsitusi, UU RI No. 22 Th. 2004 KomisiYudisial, UU RI No. 5 Th. 2004 Mahkamah Agung, UU RI No. 4 Th. 2004 Kekuasaan Kehakiman, UU RI No. 16 Th. 2004 Kejaksaan RI, UU RI No. 18 Th. 2003 Advokat, Cet. II (Jakarta: Asa Mandiri, 2007), p. 173.

[38] Zainal Abidin Abubakar, *Kumpulan Peraturan Perundang-undangan Dalam Lingkungan Peradilan Agama*, Cet.3 (Jakarta: Yayasan al-Hikmah), p. 120.

[39] A. Jazuli, *Kaidah-Kaidah Fikih, Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis*, p. 155.

[40] *Ibid.*

Islamic law as the basis for its legal reasoning. According to Muhammad Abū Zahrah, there are three objectives of Islamic law, namely as follows:[41]

1. Purification of the soul, so that every Muslim can become a source of goodness rather than harm for the surrounding community. This is pursued through various prescribed acts of worship, all of which are intended to cleanse the soul and strengthen social consciousness.[42]
2. Upholding justice in society—justice both in affairs among Muslims and in relations with others (non-Muslims). In this regard, Allah says:
   وَلَا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا۟ ۚ اعْدِلُوا۟ هُوَ أَقْرَبُ لِلتَّقْوَىٰ ۖ وَاتَّقُوا۟ اللَّهَ ۚ إِنَّ اللَّهَ خَبِيرٌۢ بِمَا تَعْمَلُونَ[43]
3. The ultimate objective of Islamic law is public welfare (maṣlaḥah). According to Abū Zahrah, Islam never prescribes any matter through the Qur'an or the Sunnah except that it contains genuine welfare, even if that welfare is not apparent to some people whose perception is obscured by personal desire. The welfare intended by the law is not one that merely follows inclinations or whims; rather, it is true welfare that concerns the public interest, not the interest of a particular individual or group.[44]

The Paradigm of Maqasid Syari'ah

According to asy-Syāṭibī, the benefit to be realised is divided into three levels of need, namely dharūriyat needs, hājiyat needs, and tahsīniyat needs.[45]

1. Mashlahah al-dharuriyyah, which is the level of necessity that must exist, or what is known as primary needs.[46] If this level of necessity is not fulfilled, the safety of humanity will be threatened, both in this world and in the hereafter. According to al-Syāṭibī, there are five things that fall into this category, namely preserving religion, preserving life, preserving reason, preserving honour and lineage, and preserving wealth. It is to preserve these five principles that the conditions of Islam were revealed.[47]
2. Mashlahah al-hājiyyah, which are secondary needs, where if they are not fulfilled, they do not threaten safety, but will cause difficulties. The

[41] Muhamad Abu Zahrah, *Ilmu Ushūl al-Fiqh*, cet ke-10 (Jakarta: Pustaka Firdaus, 2007), p. 543.-548.
[42] Ibid, p. 544.
[43] Al-Maidah [5]: 8.
[44] Muhammad Abu Zahrah, *Ilm Ushūl al-Fiqh*, p. 448.
[45] Abu Ishaq al-Shatibi, *Al-Muwafaqat fi Usul al-Shari'ah*, vol. 1, (Beirut: Darul Ma'rifah, 1997), p. 324.
[46] Muhammad Abu Zahrah, *Ilm Ushūl al-Fiqh*, p. 116.
[47] Abu Ishaq asy-Syātibī, *Al-Muwāfaqātfi Usul asy-Syarī'ah*, vol. 1, p. 325.

benefits needed to perfect the primary benefits (primary needs) are in the form of concessions to maintain and preserve basic human needs.[48]

3. Mashlahah al-tahsīniyyah, which are needs that, if not fulfilled, do not threaten the existence of any of the five essentials mentioned above and do not cause hardship. These needs are complementary needs, things that are in accordance with customs and traditions that are in line with moral and ethical demands.

From the above hierarchy of maslahat, these three types of maslahat must be distinguished so that a Muslim can determine priorities in pursuing a particular maslahat. Dharuriyyah benefits must take precedence over hajjiyyah benefits, and hajjiyyah benefits take precedence over tahsīniyyah benefits. To identify Maqāṣid asy-Syāri'ah (legal objectives) in an issue, asy-Syāṭibī discovered a method of istiqrā' al-maḥāwi as a refinement of the istiqrā' theory of earlier scholars. According to asy-Syāṭibī, the most appropriate method is to use istiqrā' (induction), which is a model of drawing general conclusions from a collection of scattered arguments. This method essentially gives the mind the freedom to understand a text. However, the mind is of course limited by the concept of Maqāṣid or maslahah, which asy-Syāṭibī mentions in sequence, namely maslahah daruriyyah (primary), maslahah hajjiyyah (secondary) and tahsīniyyah.[49]

Regarding the istiqrā' al-maḥāwi method, asy-Syāṭibī provides indications for the search for the objectives of the Law using this method,[50] , namely:

1. Determine the issue or theme that will be the subject of research or for which an answer will be sought.
2. Formulating the issue or theme that has been determined or selected, in the process of searching for a legal provision, even in a simple form. This is because this is where the data, in this case the arguments and empirical facts relevant to the issue that has been determined, come from.
3. Collecting and identifying all legal texts relevant to the issue to be answered.
4. Understanding the meaning of these legal texts one by one and the relationship between them.
5. Considering the conditions and significant indications of a society (qarīʿin al-ahwāl).

[48] Muhammad Abu Zahrah, *Ilm Ushūl al-Fiqh*, p. 118.
[49] Abu Ishaq al-Syatibī, *Al-Muwāfaqāt*, vol. II, p. 7.
[50] Ibid, pp. 393-410.

6. Examine the reasons (illah) for the laws contained in these texts, to be derived to the significant context in responding to the existence of these legal reasons and applying them in empirical cases.
7. Establishing or concluding the law being sought, whether it is universal in nature, in the form of usuliyah rules and fiqh rules, or particular in nature, in the form of specifics.

Regarding the Case

On 1 November 1990, the late Ir. Muhammad Armaya bin Renreng, also known as Ir. Armaya Renreng, married Evie Lany Mosinta in Bo'E, Poso Regency, based on marriage certificate No. 57/K.PS/XI/1990. The late IR. Muhammad Armaya bin Renreng, M.Si, alias Ir. Armaya Renreng, had no children. On 22 May 2008, Ir. Muhammad Armaya bin Renreng, M.Si, alias Ir. Armaya Renreng, passed away and left behind five heirs, namely:

1. Halimah Daeng Baji (biological mother)
2. Dra. Hj. Murnihati binti Renreng, M.Kes (sibling)
3. Dra. Hj. Mulyahati binti Renreng, M.Si (sibling)
4. Djelihatati binti Renreng, SST. (sibling)
5. Ir. Arsal bin Renreng (brother)

The deceased left behind five heirs and several assets acquired during his marriage to Evie Lany Mosinta, including immovable property and other assets, namely:

a) Immovable Assets: 1) One permanent house and its land, with an area of +216 m^2, located on Jalan Hati Murah, No. 11, Kelurahan Mattoangin, Kecamatan Mariso, Makassar. 2) One permanent house and its land, with an area of +100 m^2, located on Jl. Manuruki, Kompleks BTN Tabariah G 11/13.
b) Movable Assets: 1) One Honda Supra Fit motorcycle, licence plate number DD 5190 KS, red and black in colour. 2) Life insurance money from PT. Asuransi AIA Indonesia, amounting to Rp 50,000,000 (fifty million rupiah), which has been received by Evie Lany.[51]

Court Proceedings at the Religious Court

Citing the decision of the Makassar Religious Court Number: 732/Pdt.G/2008/P.A.Mks.[52] , the dissolution of the marriage between the deceased and the defendant was due to death (divorce by death).

In its decision, the Makassar Religious Court divided the joint property according to Islamic law because the deceased was Muslim. It stated that the defendant was entitled to ½ of the joint property mentioned above and the other ½ was

[51] Copy of PA Decision Number: 732/Pdt.G/2008/PA.Mks (See appendix).
[52] *Ibid.*

inheritance property that was the right or share of the heirs of the deceased, with the details of each share as follows, with 30 shares in total:

1. Halimah Daeng Baji (biological mother) receives 1/6 x 30 = 5 shares;
2. Dra. Hj. Murnihati binti Renreng M.Kes (sister) receives 1/5 x 25 = 5 shares;
3. Dra. Hj Mulyahati binti Renreng M.Si (sister) receives 1/5 x 25 = 5 shares;
4. Djelithati binti Renreng SST. (sister) receives 1/5 x 25 = 5 shares;
5. Ir. Muhammad Arsal bin Renreng (brother) receives 2/5 x 25 = 10 shares.

That the property or inheritance obtained by the deceased during his marriage to the defendant is, according to the law, joint property between the deceased and the defendant, which is still entirely under the control of the defendant and has not been divided by the defendant.

That the deceased was entitled to ½ (one half) of the joint property and according to the law, it is the inheritance of the deceased, which is the right of the plaintiffs as his heirs. That the inheritance of the deceased is still entirely under the control of the defendant and has not been handed over or distributed by the defendant to the plaintiffs as heirs of the deceased. The plaintiff's counterclaim that the defendant, Evie Lany Mosinta, is Christian, therefore the absolute competence to adjudicate the case is subject to the authority of the District Court, not the Religious Court. It is hereby declared and determined that the plaintiffs' lawsuit is inadmissible and that the Makassar Religious Court is the competent court to hear this case because the deceased was Muslim.

Case Proceedings at the High Religious Court

Makassar Religious High Court Decision Number: 59/Pdt.G/2009/PTA.Mks.[53] Citing all descriptions of the case as stated in the Religious Court Decision Number 732/Pdt.G/2008/PA dated 2 March 2009, corresponding to 5 Rabiul Awal 1430 H. On 1 November 1990, Ir. Muhammad Armaya bin Renreng alias Ir. Armaya Renreng, married Evie Lany Mosinta in Bo'E, Poso Regency, based on marriage certificate No. 57/K.PS/XI/1990. That in the marriage of the late IR. Muhammad Armaya bin Renreng, M.Si, alias Ir. Armaya Renreng, did not have any children. On 22 May 2008, Ir. Muhammad Armaya bin Renreng, M.Si, alias Ir. Armaya Renreng, passed away and left behind five heirs, namely:

1. Halimah Daeng Baji (biological mother);
2. Dra. HJ. Murnihati binti Renreng, M.Kes (sibling);
3. Dra. Hj Mulyahati binti Renreng, M.Si (sibling);
4. Djelithati binti Renreng, SST. (sibling);
5. Ir Arsal bin Renreng (brother).

[53] Copy of PTA Decision Number: 59/Pdt .G/2009/PTA.Mks (See attachment).

The deceased left behind five heirs as well as several assets acquired during his marriage to Evie Lany Mosinta, including both immovable and movable property as mentioned above.

The Makassar Religious High Court, in its considerations, stated that after studying the case files submitted for appeal, along with the minutes of the trial and evidence submitted by the parties, and having also considered the legal considerations underlying the Religious Court's decision, the Religious High Court was of the opinion that the considerations and decision of the Religious Court were appropriate and correct. However, the Religious High Court deemed it necessary to add the following considerations to reinforce the Religious Court's decision:

1. Although the defendant/comparator's marriage to Ir. Muhammad Armaya was registered through civil records, Ir. Muhammad Armaya still has a share in the joint property, namely half or one-half of all his estate. Half of the joint property becomes the inheritance of Ir. Muhammad Armaya, which will be inherited by his heirs.
2. Legally, the deceased was declared deceased on 22 May 2008 and based on the fact that he died as a Muslim, the settlement of his inheritance is the authority of the Religious Court because in cases of inheritance where the deceased is Muslim, it must be settled according to Islamic law even if there are family members/heirs who are non-Muslim.
3. Considering the above, the defendant's/appellant's objection must be rejected, as upheld by the first-instance court in its decision affirming the ruling of the Makassar Religious Court as follows:

Proceedings at the Supreme Court

After the defendant's appeal to the Makassar Religious High Court was rejected and the Makassar Religious High Court issued decision No. 59/Pdt.G/2009/PTA.Mks, which upheld the decision of the Makassar Religious Court No. 732/Pdt.G/2008/PA.Mks, the defendant was dissatisfied with the decision of the Makassar Religious High Court and subsequently filed a cassation appeal to the Supreme Court on 24 September 2009. Quoting from the Supreme Court's decision number 16 K/AG/2010.[54] , the reasons and demands of Evie Lany Mosinta as stated in her lawsuit are as follows:

1. That *the Judex facti* had misapplied the law, which was contrary to the provisions or at least did not comply with Article 62 paragraph (1) of LawLaw No. 7 of 1989, namely that the *a quo* decision only contains reasons for rejecting the objection without any legal basis in the decision/ruling and does not include the articles of the relevant legal

[54] Copy of Supreme Court Decision No. 16 K/AG/2010.

regulations as the basis for the trial, therefore, legally, it does not meet the requirements mandated by the legislation and the decision is void;

2. *The judex facti,* which confirmed the position of the Respondents/Plaintiffs as heirs and entitled to inherit the property of the late Muhammad Armaya bin Renreng, was erroneous and not based on law. Legally, the Petitioner is the primary heir because the marriage ended due to death, not divorce. Moreover, the marriage was conducted through civil registration.

Considerations of the Supreme Court:

Regarding the reasons stated in the cassation memorandum submitted by the Cassation Petitioner/Respondent, the Supreme Court is of the opinion that these reasons are valid and considers that *the judex facti* has erred in applying the law for the following reasons

1. The marriage between the heir and the Appellant had lasted for 18 years, which means that the Appellant had devoted herself to the heir for a long time. Therefore, even though the Appellant is not a Muslim, it is fair and just for her to obtain her rights as a wife to receive a share of the inheritance in the form of a mandatory bequest as stipulated by the Supreme Court and in accordance with the sense of justice.
2. The issue of the status of non-Muslim heirs has been extensively studied by scholars, including Yusuf Al-Qardawi, who interprets that non-Muslims living alongside Muslims cannot be categorised as kafir harbi (non-believers at war with Islam). Similarly, the Cassation Petitioner and the heirs lived harmoniously during their lifetime and despite their different beliefs, therefore it is appropriate and reasonable for the Cassation Petitioner to receive a share of the inheritance in the form of a mandatory bequest.

Based on the above considerations, the Supreme Court judges decided to grant the cassation petition of the Petitioner: Evie Lany Mosinta and overturn the decision of the Makassar Religious High Court Number: 59/Pdt.G/2009 /PTA.Mks, dated 15 July 2009, coinciding with 22 Rajab 1430 H, which upheld the decision of the Makassar Religious Court Number: 732/Pdt.G/2008 /PA.Mks, dated 2 March 2009, coinciding with 5 Rabiul Awal 1430 H.

The decision of the Makassar Religious Court Number 732/Pdt.G/2008/PA.Mks dated 2 March 2009, corresponding to 5 Rabiul Awal 1430 H, essentially resolved the dispute over inheritance and joint property after the death of Ir. Muhammad Armaya bin Renreng. The panel of judges first rejected the Defendant's objection and declared that Ir. Muhammad Armaya bin Renreng had passed away on 22 May 2008. Furthermore, the court determined the parties entitled to inheritance, namely the deceased's biological mother and siblings, both male and female. In addition, the court

also determined that there was joint property between the deceased and the Defendant, which included two houses and their land, as well as life insurance money. In the verdict, the court confirmed that the Defendant was entitled to half of the joint property, while the other half was inheritance that had to be distributed to the heirs. The distribution of the inheritance was determined on the basis of a calculation of 60 parts, whereby the biological mother received 10/60 parts, the sisters each received 7/60 parts, the brother received 14/60 parts, and the wife received a portion through a *mandatory will* mechanism of 15/60 parts. The court also ordered the Defendant to hand over the inheritance to the Plaintiff and determined that if the property could not be divided in kind, it must first be sold and then distributed in accordance with the provisions. In addition, the security deposit that had been placed was declared valid and valuable, and the parties were obliged to pay the court costs jointly and severally.

Analysis of Decision Number 16 K/AG/2010 in the Perspective of Maqāṣid asy-Syāri'ah

Linguistically, Maqāṣid asy-Syāri'ah comes from two words, namely Maqāṣid and asy-Syāri'ah. Maqāṣid is the plural form of the word Maqṣid, which means demand, intention or purpose.[55] Meanwhile, Shari'ah linguistically means "[56] " (the places that lead to water), which means the path to the source of water. The path to the source of water can also be interpreted as walking towards the source of life.[57] As for the meaning of Maqāṣid asy-Syāri'ah in terms of terminology, it is Ma'āni al-Lāti syuri'at lahā al-Aḥkām,[58] which means the values that are the objectives of the establishment of law.

Regarding the objectives of Islamic Law (Maqāṣid asy-Syāri'ah), asy-Syāṭibī formulated the theory of Maqāṣid asy-Syāri'ah with five specific objectives for the application of Islamic Law, namely to preserve religion (ḥifẓ ad-dīn), preserving life (ḥifẓ an-nafs), preserving reason (ḥifẓ al-'aql), preserving lineage (ḥifẓ an-nasl), and preserving wealth (ḥifẓ al-māl).[59] To realise the five objectives of Islamic law, asy-Syāṭibī divided them into three levels of benefit, namely Maṣlaḥah al-Ḍarūriyah, Maṣlaḥah al-Ḥājiyyah, and Maṣlaḥah at-Taḥṣīniyyah.

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[55] Hans Wehr, *A Dictionary of Modern Written Arabic,* J. Milton Cowan (ed), (London: MacDonald & Evans LTD, 1980), p. 767.

[56] Ibn Manẓūr, *Lisān al-Arb,* 3rd ed. (Beirut: DārṢādir, 1414 H), VIII, p. 175.

[57] Fazlur Rahman, *Islam,* translated by Ahsin Muhammad, (Bandung: Pustaka, 1994), p.140

[58] Ahmad al-Hāj al-Kurdī, *Madkhāl al-Fiqhī: Qawāid al-Kulliyyah,* (Damascus: Dār al-Ma'ārif, 1980), p. 186.

[59] Abu Ishaq al-Syatibī, *Al-Muwāfaqātfī Usul Asy-Syarī'ah*, volume 1, (Beirut: Dārul Ma'rifah, 1997), p. 221.

Regarding Supreme Court Decision No. 16 K/AG/2010 on inheritance between different religions, when viewed from its substantive value, the Supreme Court's consideration aims to realise maslahah for the benefit of humanity, namely to preserve religion, life, reason, wealth and offspring, which in the theory of Maqāṣid asy-Syāri'ah theory, these are the five main elements in the application of Islamic law. According to the author, the result of the decision does not deviate from the provisions of Islamic inheritance law, because the decision explains that the non-Muslim widow is not given the right to inherit but is only given a share of the estate of her Muslim husband through a mandatory will.

First, from the ruling, the author argues that the Supreme Court's decision not to grant the non-Muslim widow the status of heir is an effort by the Supreme Court to protect and preserve Islam (ḥifẓ ad-dīn) by applying the provisions of Islamic inheritance law, namely the provisions found in the hadith of the Prophet SAW. As narrated by 'Usāmah bin Zaid, which means:

> "A Muslim does not inherit from a non-Muslim, and a non-Muslim does not inherit from a Muslim."[60]

According to the author, the granting of this right by the Supreme Court judge was appropriate and fulfilled the elements of maintaining Islamic inheritance law. The determination of the wasiat wajibah in this case is in accordance with the spirit and purpose of Surah al-Baqarah verse 180 as the basis for the wasiat wajibah, as explained in the previous discussion, that according to Ibn Ḥazm, the verse on wills establishes a definitive legal obligation ( ) for Muslims to give property that will be contributed to close relatives who are not heirs or who are heirs but are prevented from receiving inheritance.[61]

Secondly, there is the concept of preservation of life (ḥifẓ an-nafs). According to the author, in relation to the Supreme Court's decision, the transfer of inheritance through a mandatory will to the non-Muslim widow also fulfils the concept of preservation of life, which is the objective of Maqāṣid asy-Shari'ah, namely that her husband's inheritance should be used to meet her needs after her husband's death in a state of sufficiency.

Thirdly, the element of preservation of wealth. Islam regulates the procedures for owning wealth and prohibits taking other people's wealth in an unlawful manner (bātīl).

وَلَا تَأْكُلُوٓاْ أَمْوَٰلَكُم بَيْنَكُم بِٱلْبَٰطِلِ وَتُدْلُواْ بِهَآ إِلَى ٱلْحُكَّامِ لِتَأْكُلُواْ فَرِيقًا مِّنْ أَمْوَٰلِ ٱلنَّاسِ بِٱلْإِثْمِ وَأَنتُمْ تَعْلَمُونَ

[60] Abu Abdillah Muhammad Ibn Ismail Ibn al-Mugīrah Ibn Bardizbah al-Bukhārī, *Ṣaḥīḥ al-Bukhārī,* Juz 4, (Beirut Lebanon: Dār al-Fikr, 1410 AH/1990 AD), p. 194.

[61] Ibn Hazm, *Al-Muhalla,* Volume IX, (Beirut: Dār Al-Alāq, n.d.), p. 314.

> "And let not some of you consume the wealth of others among you unjustly (let alone) bring (ursah) that wealth to the judge, so that you may consume part of the property of others through (committing) sin, even though you know.[62]

The author argues that the transfer of the Muslim heir's estate to non-Muslim heirs through a wasiat wajibah in the Supreme Court's decision is also in accordance with the principle of asset preservation, namely by distributing the estate to the heirs and also determining the share for the wife as the closest heir in accordance with the provisions of Islamic inheritance law. That is, without exceeding the maximum limit in the provisions for mandatory wills.

From the analysis described above, the author argues that Supreme Court Decision No. 16 K/AG/2010 regarding the distribution of the estate of a Muslim husband to his non-Muslim widow through a mandatory will is appropriate. According to the author, the Supreme Court's decision aims to apply the value of justice and take into account the social reality that exists in Indonesian society. The decision has provided a solution that is fair to all parties involved in the case. The issuance of Supreme Court Decision No. 16 K/AG/2010 can be used as an answer to the increasingly complex challenges of the times.

Then, regarding the determination of the amount of the mandatory bequest, the author disagrees with the Supreme Court's decision, referring to the theory of Maqāṣid asy-Syāri'ah, which aims to realise the public interest ( ) for humanity. According to the author, the determination of the amount for non-Muslim widows is inappropriate. In its consideration of the decision, the panel of Supreme Court judges stated that because the marriage between the heir and the defendant had lasted for 18 years and they lived harmoniously, and the reason for the termination of their marriage was death and not divorce. Therefore, the Supreme Court justices upheld the mandatory bequest to the defendant in the amount of the share for a wife who is not obstructed and has no children, namely 1/4 of the inheritance.

The mandatory bequest of 1/4 of the inheritance by the Supreme Court to the defendant did not exceed the maximum limit for bequests in general as stipulated in Article 195 or the provisions on mandatory bequests as stipulated in Article 209 of the Compilation of Islamic Law. Article 195 paragraph (2) of the Compilation of Islamic Law states that: "A will is only permitted to the extent of the inheritance, unless all heirs agree." Article 209(2) of the Compilation of Islamic Law states that "mandatory bequests may be given up to a maximum of one-third (1/3)." Therefore, based on the maximum limit for bequests stipulated in the Compilation of Islamic Law, the Supreme Court

[62] Al-Baqarah [2]:188.

determined that the portion given to non-Muslim widows should be equal to that given to wives who do not have children.

According to the author, based on Sayyid Ṣābiq's explanation in his book Fiqh as-Sunnah, it is explained that the provisions of the obligatory bequest are based on rational thinking, which is intended to provide a sense of justice to those who are close to the heir but who, according to Sharia law, do not receive a share from the farā'id. On the other hand, the four Imams of the Madhhabs have agreed that bequests should not be considered haram if they provide maṣlaḥat for the heirs.

This opinion is based on a hadith narrated by Ibn 'Abbās, that:

> عن ابن عباس أن النبي صلى الله عليه وسلم قال: الإضرار في الوصية من الكبائر[63]
>
> Meaning: from Ibn 'Abbās, may Allah be pleased with him, that the Prophet, peace be upon him, said: harming the heirs in a will is a major sin.

Based on the above hadith, the scholars of farā'id stated that the provisions of the obligatory bequest in Islamic inheritance law are: That the obligatory bequest must not harm the rights of the heirs. Then Sayyid Ṣābiq explained that:

> The prohibition of harming heirs: it is forbidden for a person to give a waqf that could harm the heirs, as the Messenger of Allah (peace be upon him) said, "Islam does not cause harm or be harmed."[64]

Based on the hadith and principles of Islamic inheritance law, the author argues that the amount of the deceased's estate allocated by the Supreme Court to heirs who are prevented from inheriting through a mandatory will must not exceed the smallest share of the heirs, or at least the share given to a wife who is prevented from inheriting, which is 1/8 when there are children.

According to the author, Supreme Court Decision Number 16 K/AG/2010 grants 15/60 or 1/4 of the deceased's inheritance to the Defendant/Appellant in the form of a mandatory will, indirectly implying that the Appellant is an heir of the deceased, only that the granting of rights is given in the form of a mandatory will. Therefore, according to the author, the Supreme Court's decision implies that the provision of impediments in Islamic inheritance law regarding religious differences will be the same regardless of whether or not the provision exists.

According to the author, a mandatory will is a form of tolerance (tasāmuh) and the result of the ijtihad of scholars to find solutions to problems in Islamic inheritance law, particularly in matters concerning substitute heirs. In inheritance law in Indonesia, the institution of wasiat wajibah is written in the KHI to accommodate heirs or relatives who are prevented from receiving

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[63] Al-Dār Quṭnī, *Sunan Dār al-Quṭnī*, 1st edition, (Beirut: Dār al-Ma'rifah, 2001), volume III, p. 384.

[64] Sayyid Sābiq, *Fiqh as-Sunnah,* (Beirut: Dār al-Fikr, 1392 AH), Volume III, p. 622.

inheritance, such as in cases of inheritance from adoptive parents and adopted children. However, in practice, the institution of wasiat wajibah is used to resolve inheritance cases where the heirs are of a different religion to the deceased.

Finally, according to the author, basing law on the provisions of the Qur'an and Sunnah is a necessity. However, in implementing the text, one must also consider its suitability to the conditions of the times so that the provisions in the Qur'an and Sunnah of the Prophet SAW always bring benefits to his people. Therefore, any legal decision that uses the consideration of public benefit must still be based primarily on Islamic law, namely the Qur'an and Sunnah of the Prophet SAW. This is in accordance with the theory of Maqāṣid asy-Syāri'ah put forward by Imam asy-Syāṭibī, namely the formulation of the objectives of Islamic law (Islamic law) aims to realise the public interest (maṣlaḥah al-'ammāh) by means of making the rules of Sharia law the most important and at the same time ṣāliḥah likulli zamān wa makān for a just, dignified and beneficial human life.

Conclusion

From the discussion of the Maqāṣid asy-Syāri'ah review of Supreme Court Decision No. 16K/AG/2010 on inheritance between different religions, which has been presented in the previous chapters, the following conclusions can be drawn as a result of the research:

1. Basically, the provisions of wajibah wills in the Compilation of Islamic Law (KHI) are only intended for adoptive parents and adopted children. However, with the passage of time, judges in both the Religious Court and the Supreme Court have expanded the provisions of wajibah wills to resolve contemporary cases. Mandatory bequests, which were previously regulated in the Compilation of Islamic Law to be given to adopted children or adoptive parents, but according to the jurisprudence of the Supreme Court, mandatory bequests are now also given to heirs who are not Muslim, the inheritance rights of children born out of wedlock, and stepchildren who have been cared for since childhood as a manifestation of the principles of humanity and egalitarianism.
2. In Supreme Court Decision No. 16 K/AG/2010, it was stipulated that a person who is prevented from receiving an inheritance due to a difference in religion with the testator can receive the testator's estate through a mandatory will. This is based on several considerations. The first consideration is justice, that the law is applied to uphold the values of justice. Justice in Supreme Court Decision No. 16K/AG/2010 is established by determining who the heirs of the deceased are and giving each heir their share in accordance with the provisions of Islamic

inheritance law and giving a share of the inheritance to the non-Muslim widow through a mandatory will. Second, the value of humanity (humanity/insaniyyah), meaning that laws that do not prioritise human values are not considered substantive laws. Third, laws are created for social engineering, which will ultimately lead to social welfare. The Supreme Court realised the basis for this decision by reconstructing the mandatory will, namely by analogising (Qiyās) the illat in the provisions of Article 209 of the KHI, which looks at the reason/cause (Illah) why an adopted child who, according to the provisions of Islamic inheritance law (farā'id), is not mentioned as receiving inheritance can be given a mandatory will. The Supreme Court considers that the services and closeness of an adopted child ( ) to their adoptive parents can be used as a reason for granting a mandatory bequest based on justice and humanity. Based on these reasons/causes, the Supreme Court sees that this case of inheritance between different religions has the same reasons/causes as those stipulated in Article 209 of the KHI, from which the Supreme Court decided to grant a mandatory bequest to the non-Muslim widow.

3. The application of the mandatory bequest for non-Muslim heirs in Supreme Court Decision No. 16K/AG/2010, when viewed from the theory of Maqāṣid asy-Syāri'ah, fulfils the elements of the objectives of Islamic law, namely the preservation of religion, life, and property. The ruling still enforces the provisions of Islamic inheritance law, which is not to grant inheritance rights but only to give a portion of the deceased's estate to meet the needs of the non-Muslim widow for her livelihood. Regarding the preservation of wealth, in the ruling, the Supreme Court gave each heir a share as determined by Islamic inheritance law, and also gave the non-Muslim widow a mandatory bequest that did not exceed the permissible limit for bequests. This was certainly done with consideration for the interests of all parties, namely the heirs and the wife who was prevented from receiving her inheritance. Judging from the issue, the Supreme Court's policy in the ruling is in accordance with the existing rules in Islamic law, that "a leader's policy towards his people must be oriented towards their interests." The application of the mandatory bequest law for non-Muslim heirs is very relevant to the pluralistic conditions of Indonesian society, which is diverse in terms of ethnicity, nationality and religion. This represents the opinion of the Maqāṣidiyyīn scholars that "all rulings are inclined towards the public interest."

This article recommends (1) revising and clarifying the provisions on wasiat wajibah in the Compilation of Islamic Law (KHI)—explicitly addressing

cases involving heirs of different religions—(2) issuing Supreme Court (MA) technical guidelines or a standardized benchbook so lower courts apply a more uniform, transparent, and predictable approach, and (3) strengthening public legal literacy and structured mediation, alongside proactive inheritance planning through wills, hibah, and documented family agreements, to reduce preventable disputes while remaining aligned with the aims of maqāṣid al-sharī'ah (justice and public benefit).

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